IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. No. 338/2007

Judgment delivered on: December 11, 2007

United India Insurance Co. Ltd. ..... Appellant

Through: Mr.Sameer Nandwani, Adv.

versus

Smt. Santosh Rajpal & Ors. ..... Respondents

Through: Mr. Sundeep Kumar, Adv. for Respondent No.1

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

KAILASH GAMBHIR, J. Oral:

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The appellant, United India Insurance Company Ltd., insurer of the offending vehicle has preferred an appeal

challenging the impugned order dated 09.04.2007 passed by the learned MACT. The impugned award has arisen out of the claim petition filed by respondent No.1 against the appellant as well as against respondent Nos.2 & 3 claiming compensation for the injuries sustained by respondent no. 1, Smt. Santosh Rajpal.

The brief facts which are necessary for deciding the present appeal inter alia are that respondent No.1 Smt. Santosh Rajpal was going towards her residence in a rickshaw after seeing her doctor. When she reached near Escorts Hospital, a vehicle bearing registration no. DL 3CB 2635, driven by the driver Sh. Ashok Kumar Gupta in a very rash and negligent manner hit the petitioner due to which she suffered multiple injuries and she was removed to Holy Family Hospital from the accident site.

The Tribunal after taking into consideration the facts of the case as well as evidence led by the parties had passed an award vide order dated 09.04.2007 in the sum of Rs. 2,81,100/- along with interest at the rate of 7% per annum payable from the date of the institution of the petition till the date of realisation.

The said order passed by the Tribunal is now under challenge in the present appeal.

I have heard learned counsel for the appellant at considerable length.

Mr. Sundeep Kumar, counsel appearing for the respondent has taken a preliminary objection to the very maintainability of the present appeal on the ground that the appellant cannot assail the findings of the Tribunal on the quantum of compensation as determined by the Tribunal. Counsel contends that the appellant had not taken over the defence of the owner and driver as envisaged under Section 170 of the Motor Vehicles Act and, therefore, is debarred from challenging the impugned award so as to assail the findings of the Tribunal on the quantum of compensation. Counsel for the respondent has placed reliance on the following judgments of the Apex Court:-

1. JT 2002 (7) SC 251, National Insurance Co. Vs. Nicollata Rohtagi;

2. AIR 1998 SC 2968, Shankarayya & Anr. vs. United India Insurance Co. Ltd.;

3. (2002) 9 SCC 527, Jagdish Prasad Pandey vs. Darshan Singh & Anr.;

4. (2002) 6 SCC 52, H.S. Ahammed Hussain & Anr. Vs. Irfan Ahammed & Anr.;

5. AIR 2003 SC 1817, Abati Bezbaruah v. Dy. Director General, Geological Survey of India, (2003) 3 SCC 148; and

6. AIR 2000 Cal 145 (DB), United India Insurance Co. Ltd. Vs. Smt. Namita Das & Ors.

The contention of counsel for the respondent is that right to file an appeal is a statutory right and the insurer can assail the findings of the Tribunal only under Section 149(2) of the Motor Vehicles Act. Counsel further contends that it is only in a case where there is collusion between the claimants and the insured, the insurer can assail the findings of the Tribunal on the grounds of quantum as well as negligence subject however to the condition that the insurer had taken permission of the Court to take over the defence of the owner or driver as the case may be as envisaged under Section 170 of the Motor Vehicles Act. No such permission was sought by the appellant under Section 170 of the Motor Vehicles Act by the Tribunal and, therefore, in the absence of the same, the appellant being the insurer of the offending vehicle cannot maintain the present appeal on grounds

other than those available to it under Section 149(2) of the Motor Vehicles Act.

Per contra, Mr.Sameer Nandwani, counsel for the appellant seriously disputes this position and contends that the insurer cannot be rendered remediless especially in a case where the Tribunal has awarded an excessive amount of compensation in favour of the claimants ignoring all basic principles of law for the award of compensation. Counsel for the appellant has also placed reliance on the judgment of the Supreme Court reported in **2007 (9) Scale 216**, **New India Assurance Company Ltd. Vs. Smt. Shanti Pathak & Ors.** to contend that the Apex Court had interfered to lower down the compensation amount even in a case where the insurer had not taken any permission from the Court under Section 170 of the Motor Vehicles Act. Counsel for the appellant also contends that the Hon'ble Supreme Court has already referred the said issue of lack of competence of the insurer to assail the findings of the Tribunal on the ground of quantum of compensation and negligence to a larger Bench and, therefore, this Court may follow the decision of the Supreme Court in this regard.

After having given my thoughtful and conscious consideration to the issue involved in the present case, I am of the view that the issue is no more res integra as in the judgments cited by the respondent, the Hon'ble Supreme Court has authoritatively held that in the absence of permission sought from the Court as envisaged under Section 170 of the Motor Vehicles Act, the insurer has no right to file an appeal to challenge the quantum of compensation or finding of the Tribunal as regards the negligence or contributory negligence of offending vehicles is concerned. It would be appropriate to refer Section 170 of the Motor Vehicles Act as under:-

> "**170. Impleading insurer in certain cases**- Where in the course of any inquiry the Claims Tribunal is satisfied that -
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> (a) there is collusion between the person making the claim and the person against whom the claim is made, or
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> (b) the person against whom the claim is made has failed to contest the claim,
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> It may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have,

> without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made."

It is an admitted case between the parties that no such permission under Section 170 of the Motor Vehicles Act was sought by the appellant which clearly means that the procedure laid down under Section 170 of the Motor Vehicles Act was not followed. In the judgment of the Supreme Court reported in (*1998) 3 SCC 140,* ***Shankarayya Vs. United India Insurance Co. Ltd.,*** the Supreme Court has held that the insurance company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions mentioned in Section 170 are found to be satisfied and for that purpose the insurance company has to obtain an order in writing from the Tribunal and such an order should be a reasoned order of the Tribunal. In such circumstances unless the said procedure is followed, the appellant insurer cannot have a wider defence on merits than what is available to it by way of a

statutory defence. Relevant part of Para 4 of the said judgment in this regard is referred as under:-

> "**4.** It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. "

In view of the said legal position, I cannot appreciate the argument of counsel for the appellant that even without seeking permission of the Court as required under Section 170, the Appellant can proceed with the appeal. Once the application under Section 170 of the Motor Vehicles Act was preferred by the appellant before the Tribunal for taking over the defence of an owner or driver, the Tribunal is required to pass specific order and that too a reasoned order as per the observations of the Supreme Court referred above and, therefore, in the instant matter the argument of counsel for the appellant cannot be appreciated that non-filing of an application under Section 170 of the Motor

Vehicles Act by the appellant in this regard is no bar in preferring present appeal.

In the light of the above discussion, I do not find any merit in the submission of counsel for the appellant. The judgment cited by the counsel in **Shanti Pathak's** case (supra) has not dealt with the said legal proposition and, therefore, the same is not applicable in the facts and circumstances of the present case.

There is no merit in the appeal and the same is dismissed.

December 11, 2007 **KAILASH GAMBHIR, J**